IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12717 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATAN TALUKA CO OP PURCHASEANDSASLES UNION
Versus
DY.COLLECTOR AND ELECTION OFFICER

Appearance:
MR TUSHAR MEHTA for Petitioners No. 1-3
MR AD OZA, GOVERNMENT PLEADER for Respondents No. 1,2,8 & 9
MR DR BHATT for Respondents No. 4-7

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE D.A.MEHTA

Date of decision:15/01/2002

C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. Rule. Mr.D.R.Bhatt, learned counsel waives service of Rule on behalf of respondent No.4 to 7. Mr.A.D.Oza, learned Government Pleader waives service of Rule on behalf of respondents No.1, 2, 8 & 9.

#. The petitioner No.3 is aggrieved by the order dated 28th December, 2001, (Annexure-A) passed by the Election Officer, Patan Taluka Cooperative Purchase & Sales Union Limited, Patan, deleting his name from the provisional list of voters prepared for election to Patan Taluka Cooperative Purchase & Sales Union Limited (petitioner No.1 - hereinafter referred to as `specified society') to be conducted in accordance with the provisions as contained in Section 145A to 145Z of the Gujarat Cooperative Societies Act, 1961 and the Gujarat Specified Cooperative Societies Election to Committee Rules, 1982, framed thereunder (hereinafter referred to as "the Act, 1961" and "the Rules, 1982" respectively).

#. The grievance of the petitioner No.3 is that because of the order aforesaid of the Election Officer deleting his name from the provisional list of voters for election to the said `specified society' on the objections preferred by respondents No.4 to 7, he has been deprived of his right to vote and contest the election to the said specified society as an authorized delegate under the Resolution of Shree Visal Vasna Vegetables and Fruit Growers Purchase and Sales Cooperative Society Limited (petitioner No.2 - hereinafter referred to as `affiliated society').

#. It is not in dispute that as per the Election programme notified, the process of election has progressed from finalization of list of voters to declaration of list of validly nominated candidates and the date of polling is 21st January, 2002.

#. On behalf of the private respondents, a preliminary objection has been raised as regards maintainability of the petition on the ground that since the process of election has already commenced, the petitioners should be relegated to the remedy of filing Election Petition after the election in accordance with Section 145U of the Act before the Tribunal and this Court, in its extra ordinary jurisdiction under Article 226 of the Constitution may not interfere. In support of this preliminary objection, strong reliance has been placed on the following decisions:

(a) Umesh Shivappa Ambi & ors. v. Angadi Shekara Basappa & ors. - AIR 1999 SC 1566

(b) Election Commission of India v. Ashok kumar & ors. - 2000(8) SCC 216

(c) Shri Sant Sadguru Janardan Swami Cooperative Society v. State of Maharashtra - 2000(8) SCC 509

#. During the pendency of this petition, the petitioners amended the petition and have also challenged the vires of Rule 78 of the Gujarat Cooperative Societies Rules, 1965 (hereinafter referred to as "the Rules, 1965"), which provides for qualification for appointment as President and Member of the Gujarat State Cooperative Tribunal as a forum provided for deciding disputes including of elections under Section 145U of the Act. The principal submission made in challenging the constitution of the Gujarat State Cooperative Tribunal is that the Rule 78 provides for appointment of President or Members thereof without consultation of the High Court. The contention is that the forum is a judicial forum, hence the provisions of Article 234 of the Constitution would be attracted and no appointment to any judicial office can be made without consulting the High Court. In support of this contention, reliance has been placed on the decision of Hon'ble Supreme Court in the case of State of Maharashtra v. Labour Law Practitioners' Association & ors. reported in 39 GLR 1078.

#. For the purpose of this case, in view of the discussion made hereinafter and conclusion arrived at, we do not consider it necessary to go into the question of validity of Rule 78 of the Rules, 1965 and the constitution of the Gujarat State Cooperative Tribunal. We have therefore not allowed the petitioners to raise the constitutional question.

#. So far as preliminary objection based on remedy of Election Petition is concerned, in our considered opinion, since the petitioner No.3 has approached this Court at a stage of preparation of voters' list, which cannot be a ground of an Election Petition under Rule 82 of the Rules, we do not think it proper to reject this petition on the preliminary objection of availability of alternative remedy of Election Petition. Even otherwise, availability of alternative remedy is only a discretionary ground for the Courts to decline relief and it si not a rigid rule to be followed in every case. The petitioners have approached this Court soon after passing of the impugned order deleting name of petitioner No.3

from the provisional list of voters. This Court has also granted interim relief by an order dated 31.12.2001 permitting the petitioner No.3 to file his nomination which is directed to be accepted only provisionally and subject to the final result of the petition. In these circumstances, on the ground of alleged deletion from the list of voters of a specified society, we do not think it proper to reject the petition only on the ground of availability of alternative remedy of Election Petition.

#. So far as the merits of the contentions advanced by learned counsel for the petitioners is concerned, the first and most important ground urged which requires to be considered carefully on the basis of Rules is that the petitioner No.3, having been sent as a delegate, duly authorized by Shree Visal Vasna Vegetables & Fruit Growers Purchase and Sales Cooperative Society Limited, being an `affiliated society', for election of the `specified society', i.e. the petitioner No.1 herein, name of petitioner No.3 ought to have been included in the list of voters an dhis name, on the objections of private respondents, could not have been deleted on the ground that the petitioner No.3 could not validly be admitted to membership of the affiliated society (petitioner No.2) because he is neither a resident nor a grower or purchaser of vegetables, fruits in Visal Vasna. The submission made on behalf of the petitioners is that even a non-member can be sent as a delegate to vote on behalf of the `affiliated society' for election to a `specified society' and deletion of name of such a delegate from the list of voters of specified society is contrary to Rules.

##. We have gone through the order in detail passed by the Election Officer allowing the objections of the private respondents and deleting the name of petitioner No.3 from the list of voters of specified society. In the opinion of the Election Officer, in addition to other conditions enumerated in by-law 7, in accordance with the by-law 7(1) of the affiliated society, i.e. the petitioner No.2, any person who is resident of Visal Vasna who si producer of fruits and vegetables, who is an agriculturist and who sells his agricultural produce, i.e. fruits and vegetables, through this (affiliated) society, is qualified to become a member of this affiliated society. The Election officer accepted the objections raised by the private respondents that the petitioner No.3 is resident of village Pali of Taluka: Unjha, District: Mehsana, that he is registered as voter of Assembly constituency from village Pali, that as per the by-laws of the affiliated society, he cannot be

validly admitted as a member of the said society which is situated in Taluka of District Patan. The Election Officer, under the impugned order, rejected the claim of petitioner No.3 of having rented accommodation in Visal Vasna with agricultural lands at that place. He also rejected the claim of the petitioner No.3 of having ration card for Fair Price Shop in village Visal Vasna. While rejecting the case of petitioner No.3 of his being a bonafide resident of village Visal Vasna, the Election Officer relied on the certificate issued by Talati of Visal Vasna dated 19.12.2001 to the effect that any person by name of Shri Dahyabhai Pitambardas Patel (petitioner No.3) is neither resident of village Visal Vasna nor is having any agricultural lands at the said village. This certificate is issued on verifying the records. In deciding the objection of private respondents, reliance has also been placed on the information in writing supplied by the Mamlatdar, Patan, on 27.12.2001, whereby he informed the Deputy Collector that the ration card, on the basis of which the petitioner No.3 claims to be resident of village Visal Vasna, is not recorded to have been issued from his office. It is on these information and material that under the impugned order dated 28.12.2001, the Election Officer came to conclusion that the name of petitioner No.3 cannot be included in the list of voters of the `specified society', petitioner No.1.

##. For the purpose of deciding the main submission advanced on behalf of the petitioners that even a non-member can be sent by an `affiliated society' as its delegate and voter in the election of a `specified society', relevant provisions of Rules are required to be considered. Under Rule 4(1) of the Rules, 1982, every specified society is required to prepare a provisional list of voters for general election when due. Sub-rule (1) of Rule 5 of these Rules requires names of individual shareholders of the specified society to be included in the provisional list of voters. Sub-rule (2) of Rule 5 of the Rules, 1982, is attracted in the present case as it is admitted that right to participate in election of `specified society' (petitioner No.1) by the `affiliated society' (petitioner No.2) is claimed on the basis of membership of the `affiliated society' to the `specified society'. Sub-rule (2) of Rule 5 of the Rules, 1982, reads thus:

5(2): "Where a society is a member of a specified society, the specified society shall call for the name of the delegate duly authorized to vote at an election on behalf of the

affiliated society, so as to reach it, within ten days next after the date of drawing up the accounts. While communicating the name of its delegate to the specified society, the affiliated society shall enclose a copy of the resolution of the society or its committee under which the delegate is so authorized. The specified society shall include in the list of voters the names of all such delegates as have been communicated to it before the date fixed for publication of the provisional list. In addition to the names of the delegates, the list shall contain the names of the affiliated societies, their registration numbers and addresses and the names of constituencies, if any, to which they belong. A society which has communicated the name of its delegate shall by like resolution be permitted to change the name of its delegate upto the sixth day before the date appointed by the Collector under Rule 16 of the said Rules for making nominations"

(Underlined by Court for emphasis)

From Sub-rule (2) of Rule 5 of the Rules, 1982, it is clear that where an `affiliated society' is a member of a `specified society', the former can send its delegate by resolution to the specified society for election and for exercising its right as a voter and candidate. The next Rule, i.e. Rule 6 of the Rules, 1982, is also relevant on the point. It provides for submission of claims and objections to the names included in the provisional list of voters. Sub-rule (1) of Rule 6 of the Rules, 1982, reads as under:

6(1): "When any provisional list of voters is Published for inviting claims and objections, any omission or error in respect of the name or address or other particulars in the list may be brought to the notice of the Collector by any member of the society concerned who is a voter or any delegate authorized to vote on behalf of such society".

From the underlined portion of sub-rule 6(1) of the Rules, 1982, quoted above, it is clear that the Rules make a distinction between a member of the society concerned who is a voter and any delegate authorized to vote on behalf of such society. The wording of the above Rule makes it clear that a delegate authorized to vote on behalf of society need not necessarily be a member of the

society concerned. Such a delegate authorized by resolution of the `affiliated society' gets a right to vote or stand for election on behalf of the `affiliated society'. A delegate so authorized can have two rights. He can be authorized to exercise right of vote and he can also be authorized to contest election as a representative of the affiliated society. For this purpose, the most important Rule is Rule 18 of the Rules, 1982, which is required to be considered here. Rule 18 of the Rules, 1982, provides for qualification for nomination of a candidate and the procedure of such nomination. Sub-rule (1) of Rule 18 and the first proviso thereunder are relevant for the purpose of this case and they are reproduced hereunder:

"18. Nomination of candidates -- (1) Any person be nominated as a candidate for election to fill a seat, if he is qualified to be chosen to fill that seat under the provisions of the Act, rules and bye-laws and his name is entered in the list of voters:

Provided that where a society sends the candidate to stand at election, such society shall pass a resolution in its managing committee authorizing such candidature and the nomination form of such candidate shall be accompanied by a certified copy of such resolution ...."

(underlined for emphasis)

From Sub-rule (1) of Rule 18 of the Rules, 1982, it is clear that for validly nominating a candidate for election, a candidate should be qualified to be chosen to fill that seat under the provisions of the Act, 1961, Rules and by-laws. Further requirement is that name of such candidate should be entered in the list of voters.

Proviso below Sub-rule (1) of Rule 18 of the Rules, 1982, is pertinent, which says that where a society sends a candidate to stand at election, such society has to pass a resolution in its managing committee authorizing such candidature and the nomination form of such candidate shall be accompanied by certified copy of such resolution.

Sub-rule (4) of Rule 18 of the Rules, 1982, gives an inherent indication of the overall scheme when it provides for two distinct resolutions: one as required under first proviso under sub-rule (1) of Rule 18 for authorizing candidature of a member to contest the

election of a `specified society', and another under sub-rule (2) of Rule 5 for authorizing a delegate to vote at such an election. Thus a delegate need not necessarily be a member of the `affiliated society'.

Rule 18(4) of the Rules, 1982, reads as under:

18. Nomination of candidates --

... ...

(4) The resolution referred to in sub-rule (1) shall be distinct and in addition to the resolution of a society for electing its delegate to vote on its behalf at the election of federal society.

##. In the instance case, the petitioners have not produced the resolution of the affiliated society under which the petitioner No.3 has been sent as a delegate to participate in the election to the specified society. In the absence of the copy of such resolution, it is not clear as to whether the petitioner No.3 has been sent as a delegate only to vote in the election of `specified society' on behalf of affiliated society or he has also been authorized to contest the election and fill his nomination form for election of `specified society'.

##. It is also clear from the reading of the above Rules that a delegate of an affiliated society need not necessarily be a member of that society. Such a delegate cannot be denied right of exercising vote on behalf of the affiliated society in the election of the specified society, but such a delegate, to be able to contest the election to the `specified society', should be a qualified member to fill the seat under the provisions of the Act, 1961, Rules and by-laws. The qualifications and disqualifications of a candidate for filling a valid nomination are provided in the Act, Rules and by-laws. By-law 7(1) of the `specified society' provides for qualification for membership. It is provided in the said by-law that any person who is either a credit or non-credit cooperative of Patan Taluka or any person who is resident of that Taluka or who is a member of a registered credit or non-credit cooperative society of Patan Taluka, is eligible to be admitted as a member of the society. We have already mentioned above that under by-law 7(1) of the `affiliated society' (petitioner No.2) which provides for qualification for being admitted to the membership of `affiliated society', any person who is resident of Visal Vasna, who is producer of fruits and

vegetables, who is an agriculturist and who sells his agricultural produce, i.e. fruits and vegetables, through this (affiliated) society, is qualified to become a member of this affiliated society.

##. From the reading of the Rules, 1982, particularly Rule 4(1), 5(2), 6(1), read Rule 18(1) and proviso thereto, we are of the considered opinion that petitioner No.3, on the basis of the resolution authorizing him as a delegate cannot be denied the right to exercise vote on behalf of the affiliated society and his name from the list of voters as a delegate of the `affiliated society' could not have been excluded on the ground that he is not validly admitted as a member of the `affiliated society' as he is neither resident nor is grower or dealer or having agricultural land in village Visal Vasna. The impugned order dated 28.12.2001 (Annexure-A) of the Election Officer to that extent deserves to be interfered with.

##. From the reading of the relevant Rules aforesaid, in our opinion, however, the question whether the petitioner who is merely a delegate and is neither a resident of Visal Vasna, nor an agriculturist or vegetable or fruit grower of Visal Vasna, can be allowed to contest the election of the `specified society' is required to be dealt with in accordance with the programme of election at the stage of scrutiny of nomination papers. As per the election programme notified (a copy of which is at Annexure-B to the petition), the date fixed for scrutiny of nomination papers is 2.1.2001, which is already over. Since by an interim order made on 31.12.2001, followed by orders dated 1.1.2002 and 10.1.2002, this Court has directed the respondent-authorities to provisionally allow the petitioner No.3 to fill his nomination paper, and since the date of polling is on 21.1.2002, we consider it appropriate to direct the Election Officer, Patan Taluka Cooperative Purchase & Sales Union Limited, Patan, to fix, 17th January, 2002, as the date for scrutiny of the nomination of petitioner No.3 after inviting claims and objections to such nomination. The Election Officer shall scrutinize the nomination of petitioner No.3 either on 17th, 18th or 19th, January, 2002, whichever date is convenient to the concerned parties in the election. However, latest by 19th January, 2002, he will decide the objections to the nomination to publish the final list of nominated candidate on 19th January, 2002, in order to hold elections on scheduled date, i.e. 21.1.2002.

##. We make it clear that while making scrutiny of the

nomination of petitioner No.3, it would be open to the private respondents herein and other contesting candidates and voters to raise objections to the nomination of petitioner No.3 on the grounds available and urged at the time of preparation of provisional list of voters. If such objections and claims are raised, the Election Officer, at the time of scrutiny, shall decide the same on the basis of material produced before him and in accordance with the provisions of Rules 18 to 27 of the Rules 1982, Act 1961, Rules 1965, and the by-laws of the concerned societies.

##. In view of the interpretation of Rules made by us above, it is not necessary to go into other grounds like breach of principles of natural justice and based on the Rules.

##. Consequently, the petition partly succeeds and is accordingly partly allowed. The impugned order of the Election Officer dated 28.12.2001 (Annexure-A), is hereby quashed and set aside. The respondent No.1, being the Deputy Collector and Election Officer for election of Patan Taluka Cooperative Purchase and Sales Union Limited, a `specified society', is hereby directed to suitably adjust the election programme before the scheduled date for polling, by inviting claims and objections for scrutiny of the nomination of petitioner No.3. On the date notified for inviting the objections to nomination of petitioner No.3, the Election Officer, in accordance with Rules 18 to 27 of the Rules, 1982, shall scrutinize the nomination papers for considering the validity or otherwise of the nomination of petitioner No.3 as a candidate for contesting the election to the `specified society'. After following necessary procedure by re-fixing the dates for the purpose, the Election Officer shall take a final decision on the nomination of petitioner No.3 latest by 19th January, 2002, so that election may be held on the scheduled date, i.e. 21.1.2002, without hindrance. Rule is made absolute in aforesaid terms. In the circumstances, we however direct that the parties shall bear their own costs.

(D.M.Dharmadhikari, C.J.)

(D.A.Mehta, J.)

(sunil)